

General Information Letter: No withholding of Illinois income tax is required unless federal income tax must be withheld from the payment.

February 28, 2002

Dear:

This is in response to your letter dated January 25, 2002, in which you request a legal opinion. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is [www.revenue.state.il.us/legalinformation/regs/part1200](http://www.revenue.state.il.us/legalinformation/regs/part1200).

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state as follows:

X University has some nonresident alien students for tax purposes. Some of these students are from foreign countries that have income tax treaties with U.S. One of these countries is Pakistan. Per Article XIII (Students and Trainees) of the treaty between Pakistan and U.S., if an individual is present in the U.S. for the primary purpose of studying at a U.S. university, compensation for services (as a graduate assistant or student aid) in an amount up to \$5,000.00 for each taxable year is exempt from taxation.

My question is, does the State of Illinois also allow similar exemption from state income tax withholding?

Another question I have is, for those students who are nonresident alien for tax purposes, but are not from a country that has a treaty with U.S., I require an additional \$16.60 bimonthly to be deducted from the student's pay check. This additional amount will make up for the standard deduction that is not allowed to a nonresident alien. Does the State of Illinois also require such additional amount to be withheld?

In response to your inquiry, please be advised that IITA Section 701 provides in pertinent part as follows:

Every employer maintaining an office or transacting business within this State **and required under the provisions of the Internal Revenue Code to withhold** a tax on :

- (1) compensation paid in this State (as determined under Section 304 (a)(2)(B) to an individual...
- (2) ...shall deduct and withhold (income tax) from such compensation for such each payroll period... an amount equal to the amount by which such individual's compensation exceeds the proportionate amount of his withholding exemption...(emphasis added).

Accordingly, if X is not required to withhold federal income tax from the students' compensation because of a treaty, there will be no obligation to withhold Illinois income tax from the compensation.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,  
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